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May 11, 2018

## PSC STAFF OPINION 2018-007

David S. Samford  
Goss Samford, PLLC  
2365 Harrodsburg Rd., Suite B-325  
Lexington, KY 40504

Re: East Kentucky Power Cooperative, Inc.'s Spurlock Station Landfill

Dear Mr. Samford:

Commission Staff acknowledges receipt of your letter dated January 10, 2018, on behalf of East Kentucky Power Cooperative, Inc. ("EKPC"), in which you requested an opinion as to whether a Certificate of Public Convenience and Necessity ("CPCN") is required for the expansion of the landfill at Spurlock Station, or whether the expansion falls within the "ordinary course of business" exception and, therefore, does not require a CPCN.

Commission Staff observes that in Case No. 2017-00376, which is currently pending before the Commission, EKPC filed an application for, among other things, the approval of its amended Environmental Compliance Plan (the "Application").<sup>1</sup> Specifically, EKPC requested Commission approval for proposed amendments to its Environmental Compliance Plan that it contends are necessary to comply with Coal Combustion Residuals Rules ("CCR Rules") and Effluent Limitation Guideline Rules ("ELG Rules") promulgated by the Environmental Protection Agency.<sup>2</sup> The CCR Rules pertain specifically to the owners and operators of new and existing landfills and establish federal

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<sup>1</sup> See Case No. 2017-00376, *Application of East Kentucky Power Cooperative, Inc. for Approval to Amend its Environmental Compliance Plan and Recover Costs Pursuant to Its Environmental Surcharge, Settlement of Certain Asset Retirement Obligations and Issuance of a Certificate of Public Convenience and Necessity and Other Relief* (filed Nov. 20, 2017), Application at 1 ("Case No. 2017-00376, Application").

<sup>2</sup> *Id.* at 7-13.

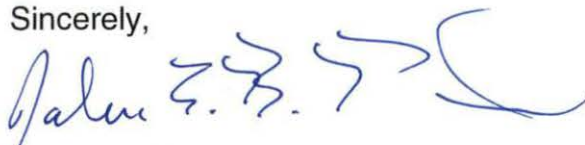
regulations regarding the construction and operation of landfills, such as the Spurlock Station landfill, used to store coal combustion residuals.<sup>3</sup>

EKPC reported in the Application that it considered several options for remaining compliant with CCR Rules and ELG Rules, including a plan to replace Spurlock Station's coal-fired generators with gas-fired generators, which would eliminate coal combustion residuals going forward, and a plan to modify portions of the existing plant to comply with the new rules.<sup>4</sup> Based on its analysis, EKPC concluded that keeping the coal-fired generators and modifying the existing plant was the most cost effective option to comply with the CCR Rules and ELG Rules.<sup>5</sup> However, that option includes expanding the existing Spurlock Station landfill.<sup>6</sup> Thus, EKPC's plan to expand the Spurlock Station landfill has been presented to the Commission in the Application and will be reviewed in determining whether to approve the Environmental Compliance Plan (Commission Staff has also made inquiries in Case No. 2017-00376 regarding necessity and cost of any landfill expansion).

Commission Staff Opinions, such as the opinion requested in your January 10, 2018 letter, are advisory in nature and are not binding on the Commission. Because the issue presented in your letter is closely related to matters at issue in Case No. 2017-00376, Commission Staff believes the Commission is likely to address it therein or, at minimum, make a ruling that could affect the analysis of Commission Staff.<sup>7</sup> Thus, Commission Staff declines to issue an advisory opinion on that issue at this time.

Questions concerning this opinion should be directed to Benjamin Bellamy at (502) 782-2584.

Sincerely,



John E.B. Pinney  
Acting General Counsel

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<sup>3</sup> See 80 Fed. Reg. 2 1302 (April 17, 2015).

<sup>4</sup> Case No. 2017-00376, Application at 7-13.

<sup>5</sup> *Id.* at 9-13.

<sup>6</sup> *Id.* at 15.

<sup>7</sup> See Case No. 2016-00274, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of an Optional Solar Share Program Rider* (Ky. PSC Nov. 4, 2016), Final Order (where the Commission was asked to approve a tariff rider for a solar facility but undertook to address whether a CPCN was required for the construction of the facility).